

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION**

ZURICH AMERICAN INSURANCE)
COMPANY,)

Plaintiff(s),)

vs.)

FLUOR CORPORATION, et al.,)

Defendant(s).)

Case No. 4:16CV00429 ERW

MEMORANDUM AND ORDER

This matter comes before the Court on Fluor Corporation's Motion for Sanctions against Plaintiff/Counter-Defendant Zurich American Insurance Company [247]. Fluor requests the Court sanction Zurich by entering an order of default on Fluor's Counterclaims, dismissing Zurich's pleadings, and setting this action for a damages hearing.

On July 26, 2019, the Court held a hearing on Fluor's Motion for Sanctions. After hearing argument of counsel for Fluor and Zurich, the Court instructed the parties to meet and confer regarding issues identified in Fluor's Motion for Sanction, specifically the production of documents sought by Fluor from four categories of records. The Court further instructed the parties to address the manner in which discovery could proceed and ordered each party to file a written report regarding the results of the meet and confer. On July 29, 2019, counsel for Fluor, submitted a Response to the Court's Request, and counsel for Zurich submitted a Meet and Confer Status Report.

After considering the content of those submissions, the Court declines to issue terminating sanctions against Zurich and instead sets forth the following order:

Zurich is to produce documents to Fluor as outlined below by category of records:

- **Electronically-Stored Information from Zurich’s outside counsel, Randy Sinnott and JoLynn Pollard:** The Court orders Zurich to run ESI searches and produce all responsive documents for the time period 07/01/2009–03/31/2012, without redaction or any claims of privilege, and with the understanding that any such privilege is waived. Zurich must produce these documents on or before August 31, 2019.
- **The contents of the Banker Boxes previously searched in 2016:** The Court orders Zurich to upload all documents, scan them, run ESI Protocol searches, and produce all responsive documents for the time period 07/01/2009–03/31/2012, without redaction or any claims of privilege, and with the understanding that any such privilege is waived. Zurich must produce these documents on or before August 31, 2019.
- **Disaster Recovery Tapes:** The Court orders Zurich to restore the mailboxes for any custodian listed in the ESI Protocol who has a mailbox for the time period 10/15/2010–01/31/2011, and run ESI Search terms on those mailboxes, and then produce responsive records from those ESI searches, without redaction or any claims of privilege, and with the understanding that any such privilege is waived. Zurich must produce these documents on or before August 31, 2019.
- **Documents Produced in the Case To-Date with Redactions or Logged on Privilege Log:** The Court orders Zurich to produce all documents in the case, from the time period 07/01/2009–03/31/2012, previously redacted, without redactions and without claims of privilege and with the understanding claimed privilege is waived, except as to documents previously ruled by the Court as privileged. Zurich must produce these documents on or before August 31, 2019.

The Court further orders that compliance with each of the above-listed requirements be certified by a management-level Zurich employee involved in the production of the documents—under penalty of perjury and subject to contempt for further misrepresentations.

The Court orders Zurich to bear the costs incurred in the production of documents outlined above. The parties shall cooperate in the deposing and re-deposing of all witnesses to accommodate all provisions of the current case management order.

Accordingly,

IT IS HEREBY ORDERED that Fluor Corporation's Motion for Terminating Sanctions against Plaintiff/Counter-Defendant Zurich American Insurance Company [247] is **DENIED**.

So Ordered this 1st day of August, 2019.



E. RICHARD WEBBER
SENIOR UNITED STATES DISTRICT JUDGE